

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for Endangered Species Act Section 9 Prohibitions**

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency cooperative policy to establish a procedure at the time a species is listed as threatened or endangered to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Endangered Species Act of 1973 (Act), as amended, and to increase public understanding and provide as much certainty as possible regarding the prohibitions that will apply under section 9. By identifying activities likely or not likely to result in violation of section 9 at the time a species is listed, the Services intend to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358-2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713-2322).

SUPPLEMENTARY INFORMATION:**Background**

Section 9 of the Act prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to United States jurisdiction. Section 4(d) of the Act allows the promulgation of regulations that apply any or all of the prohibitions of section 9 to threatened species. Under the Act and regulations, it is illegal for any person subject to the

jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species and most threatened fish and wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. With respect to endangered plants, analogous prohibitions make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law.

Policy

It is the policy of the Services to identify, to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9. To the extent possible, activities that will be considered likely to result in violation also will be identified in as specific a manner as possible. For those activities whose likelihood of violation is uncertain, a contact will be identified in the final listing document to assist the public in determining whether a particular activity would constitute a prohibited act under section 9.

Scope of Policy

This policy applies for all species of fish and wildlife and plants, as defined under the Act, listed after October 1, 1994.

Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

Dated: June 27, 1994.

Mollie H. Beattie,
Director, U.S. Fish and Wildlife Service,
Department of the Interior.

Dated: June 24, 1994.

Rolland A. Schmitt,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
[FR Doc. 94-16023 Filed 6-30-94; 8:45 am]
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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act**

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy relative to recovery plan participation and implementation under the Endangered Species Act of 1973, as amended. This cooperative policy is intended to minimize social and economic impacts consistent with timely recovery of species listed as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). In addition, this policy provides a Participation Plan process, which involves all appropriate agencies and affected interests in a mutually-developed strategy to implement one or more recovery actions.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358-2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

Section 4(f) of the Act directs the Secretary of the Commerce and the Secretary of Interior to develop and implement recovery plans for animal and plant species listed as endangered or threatened, unless such plans would not promote the conservation of the species. Coordination among State, Tribal or Federal agencies, academic institutions, private individuals and organizations, commercial enterprises, and other affected parties is perhaps the most essential ingredient for recovering a species.

Policy

To enhance recovery plan development and implementation, while recommending measures that accomplish the goals of a recovery plan, the Services will:

- A. Diversify areas of expertise represented on a recovery team,
- B. Develop multiple species plans when possible,
- C. Minimize the social and economic impacts of implementing recovery actions,
- D. Involve representatives of affected groups and provide stakeholders the opportunity to participate in recovery plan development, and
- E. Develop recovery plans within 2 1/2 years after final listing.

(1) Recovery Plan Preparation and Process

The method to be used for recovery plan preparation shall be based on several factors, including the range or ecosystem of the species (limited vs. extensive), the complexity of the recovery actions contemplated, the number of organizations responsible for the implementation of the recovery tasks, the availability and expertise of personnel, and the availability of funds. Outside expertise in the form of recovery teams, other Federal agencies, State agency personnel, Tribal governments, private conservation organizations, and private contractors shall be used, as necessary, to develop and implement recovery plans in a timely manner that will minimize the social and economic consequences of plan implementation.

Team members should be selected for their knowledge of the species or for expertise in elements of recovery plan design or implementation (such as local planning, rural sociology, economics, forestry, etc.), rather than their professional or other affiliations. Teams are to be composed of recognized experts in their fields and are

encouraged to explore all avenues in arriving at solutions necessary to recover threatened or endangered species. Factors for selection of team members are (1) expertise (including current involvement, if possible), with respect to the species, closely related species, or the ecosystem in which it is or may once again become a part, (2) special knowledge of one or more threats contributing to the listed status of the species and (3) knowledge of one or more related disciplines, such as land use planning, state regulations, etc. The Services also will select team members based on special knowledge essential for the development of recovery implementation schedules, particularly development of Participation Plans that are intended to minimize the social and economic effects of recovery actions. Teams should include representatives of State, Tribal, or Federal agencies, academic institutions, private individuals and organizations, commercial enterprises, and other constituencies with an interest in the species and its recovery or the economic or social impacts of recovery.

(2) Involvement of Affected Groups

Whether a recovery plan is developed by the Service's biologists, contractors, or a recovery team, each plan will seek the best information to fulfill the intent of the Act regarding recovery planning. This information and input from affected interests will be used to develop alternatives for recovery implementation that not only meet requirements for the recovery of a species, but minimize social and economic effects of recovery actions. Representatives of affected interests that can be determined during recovery plan development will be asked to participate during plan development and implementation.

(3) Implementing Recovery Actions

Implementation of recovery plans will be accomplished through the means that will provide for timely recovery of the species while minimizing social and economic impacts. The Services will involve all affected interests in the recovery plan implementation process through the development of a Participation Plan. A Participation Plan should involve all appropriate agencies and affected interests in a mutually developed strategy to implement one of more specifically designated recovery actions. Participation Plans should ensure that a feasible strategy is developed for all affected interests while providing realistic and timely recovery of the species.

Nothing in this policy is intended to change the current policy of developing recovery plans within 2½ years after final listing of a species (18 months for draft recovery plan and a final recovery plan within an additional 12 months of the draft).

Scope of Policy

The scope of this policy is Servicewide for all species of fish and wildlife and plants, as defined pursuant to section 3 of the Act (16 U.S.C. 1532).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

Dated: June 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service,
Department of the Interior.

Dated: June 24, 1994.

Roland A. Schmitt,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for the Ecosystem Approach to the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy to incorporate ecosystem considerations in Endangered Species Act actions regarding listing, interagency cooperation, recovery and cooperative activities.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358-2171), or Russell Bellmer, Chief, Endangered Species

Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

A primary purpose of the Act (section 2(b)) is "to provide a means whereby the ecosystems upon which endangered or threatened species depend may be conserved. . . ."

Section 5(a) authorizes the establishment and implementation of a program to conserve fish, wildlife, and plants, including those which are listed as endangered or threatened. Section 6 authorizes partnerships with the States to develop cooperative programs for the conservation of endangered and threatened species. Section 7(a)(1) obligates all Federal agencies to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of endangered and threatened species. Section 8 encourages partnerships with foreign countries to provide for conservation of fish or wildlife and plants. Section 10 conservation planning provides opportunities for ecosystem-level resource protection with non-federal partners to address concerns of threatened and endangered species.

Success of ecosystem management will depend on the cooperation of partners, (federal, state, and private). Setting new internal standards for teamwork and communication between regions and other agencies will be emphasized to support an ecosystem approach to species conservation. Species will be conserved best not by a species-by-species approach but by an ecosystem conservation strategy that transcends individual species. The future for endangered and threatened species will be determined by how well the agencies integrate ecosystem conservation with the growing need for resource use.

Policy

The purpose of this cooperative policy is to promote healthy ecosystems through activities undertaken by the Services under authority of the Endangered Species Act of 1973 (Act), as amended, and associated regulations in Title 50 of the Code of Federal Regulations. In the following endangered species activities, it is the policy of the Services to incorporate ecosystem considerations in Endangered Species Act activities in the following manner:

A. Listing

(1) Group listing decisions on a geographic, taxonomic, or ecosystem basis where possible.

(2) Develop partnerships with other Federal, State, Tribal, and private agencies to conduct comprehensive status reviews across the entire range of candidate species.

B. Interagency Cooperation

(1) Develop cooperative approaches to threatened and endangered species conservation that restore, reconstruct, or rehabilitate the structure, distribution, connectivity and function upon which those listed species depend.

C. Recovery

(1) Develop and implement recovery plans for communities or ecosystems where multiple listed and candidate species occur.

(2) Develop and implement recovery plans for threatened and endangered species in a manner that restores, reconstructs, or rehabilitates the structure, distribution, connectivity and function upon which those listed species depend. In particular, these recovery plans shall be developed and implemented in a manner that conserves the biotic diversity (including the conservation of candidate species, other rare species that may not be listed, unique biotic communities, etc.) of the ecosystems upon which the listed species depend.

(3) Expand the scope of recovery plans to address ecosystem conservation by enlisting local jurisdictions, private organizations, and affected individuals in recovery plan development and implementation.

(4) Develop and implement agreements among multiple agencies that allow for sharing of resources and decision making on recovery actions for wide-ranging species.

D. Cooperative Efforts

(1) Use the authorities of the Act to develop clear, consistent policies that integrate the mandates of Federal, State, Tribal, and local governments to prevent species endangerment by protecting, conserving, restoring, or rehabilitating ecosystems that are important for conservation of biodiversity.

(2) Integrate research and technology development on conservation of endangered and threatened species with initiatives for management of ecosystems that serve many other uses.

(3) Prioritize actions and system monitoring schemes to meet specific objectives for genetic resources, species populations, biological communities, and ecological processes through

carefully designed adaptive management strategies.

(4) Integrate ecosystem-based goals of the Endangered Species Act with existing mandates under other environmental laws, such as the National Environmental Policy Act, Clean Water Act, Clean Air Act, Marine Mammal Protection Act, Magnuson Fishery Conservation and Management Act, and Fish and Wildlife Coordination Act.

Scope of Policy

The scope of this policy is Servicewide for all species of fish and wildlife and plants, as defined pursuant to section 3 under the Act (16 U.S.C. 1532) and for listing, recovery, land acquisition, interagency consultation, international cooperation, and permitting programs as outlined in, and to the extent consistent with the provisions of sections 4(a)(c), 4(e)(g), 7(a)(c), 8A(c), and 10(a) of the Act, respectively.

Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

Dated: June 27, 1994.

Mollie H. Beattie,
Director, U.S. Fish and Wildlife Service,
Department of the Interior.

Dated: June 24, 1994.

Rolland A. Schmitten,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Act Activities

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy to clarify

the role of State agencies in activities undertaken by the Services under authority of the Endangered Species Act of 1973, as amended (Act), and associated regulations in title 50 Code of Federal Regulations.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358-2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

The Services recognizes that, in the exercise of their general governmental powers, States possess broad trustee and police powers over fish, wildlife and plants and their habitats within their borders. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish, wildlife and plants and their habitats.

State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out the program authorized by the Act. The term State agency means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

Policy

In the following Endangered Species Act programs, it is the policy of the Services to:

A. Prelisting Conservation

1. Utilize the expertise and solicit the information of State agencies in determining which species should be included on the list of candidate animal and plant species.

2. Utilize the expertise and solicit the information of State agencies in conducting population status inventories and geographical distribution surveys to determine which species warrant listing.

3. Utilize the expertise of State agencies in designing and implementing prelisting stabilization actions, consistent with their authorities, for species and habitat to remove or alleviate threats so that listing priority is reduced or listing as endangered or threatened is not warranted.

4. Utilize the expertise and solicit the information of State agencies in responding to listing petitions.

B. Listing

1. Utilize the expertise and solicit the information of State agencies in preparing proposed and final rules to: (a) List species as endangered or threatened, (b) define and describe those conditions under which take should be prohibited for threatened species, (c) designate critical habitat, and (d) reclassify a species from endangered to threatened (or vice versa) or remove a species from the list.

2. Provide notification to State agencies of any proposed regulation in accordance with provisions of the Act.

C. Consultation

1. Inform State agencies of any Federal agency action that is likely to adversely affect listed or designated critical habitat; or that is likely to adversely affect proposed species or proposed critical habitat and request relevant information from them, including the results of any related studies, in analyzing the effects of the action and cumulative effects on the species and habitat.

2. Request an information update from State agencies prior to preparing the final biological opinion to ensure that the findings and recommendations are based on the best scientific and commercial data available.

3. Recommend to Federal agencies that they provide State agencies with copies of the final biological opinion unless the information related to the consultation is protected by national security classification or is confidential business information. Decisions to release such classified or confidential business information shall follow the action agency's procedures. Biological opinions, not containing such classified or confidential business information,

will be provided to the State agencies by the Services, if not provided by the action agency, after 10 working days. The exception to this waiting period allows simultaneous provision of copies when there is a joint Federal-State consultation action.

D. Habitat Conservation Planning

1. Utilize the expertise and solicit the information and participation of State agencies in all aspects of the Habitat Conservation Planning (HCP) process.

E. Recovery

1. Utilize the expertise and solicit the information and participation of State agencies in all aspects of the recovery planning process for all species under their jurisdiction.

2. Utilize the expertise and solicit the information and participation of State agencies in implementing recovery plans for listed species. State agencies have the capabilities to carry out many of the actions identified in recovery plans and are in an excellent position to do so because of their close working relationships with local governments and landowners.

3. Utilize the expertise and authority of State agencies in designing and implementing monitoring programs for species that have been removed from the list of Endangered and Threatened Wildlife and Plants. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish, wildlife and plants and their habitats, and are in an excellent position to provide for the conservation of these species following their removal from the list.

Scope of Policy

The scope of this policy is Servicewide.

Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1536).

Dated: June 27, 1994.

Mollie H. Beattie,

*Director, U.S. Fish and Wildlife Service,
Department of the Interior.*

Dated: June 24, 1994.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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